Tan Siew Sen & Ors v Nick Abu Dusuki bin Hj Abu Hassan & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-04–249–09 OF 2014
ZAWAWI SALLEH, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA
13 MAY 2016

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Family Law — Marriage — Customary marriage — Parties underwent Chinese customary marriage after Law Reform (Marriage and Divorce) Act 1976 ('LRA') came into force but failed to register marriage under LRA — Whether marriage null and void under LRA and neither party recognised as husband or wife — Whether 'wife' accordingly could not qualify as such under s 7(2) of the Civil Law Act 1956 to file dependency claim against party who had caused 'husband's' death — Whether s 34 of the LRA could not be used to validate any marriage entered into after 1 March 1982 which was not registered under LRA

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The appellants sued the respondents in the sessions court for general and special damages over a road accident which killed two persons — Low Sai Tiam ('Sai Tiam') and his son, Low Chin Wee ('Chin Wee'). The two deceased persons were in a jeep driven by the first appellant when it collided with a vehicle driven by the first respondent. The sessions court found the first respondent wholly liable for the accident and awarded the third appellant, who claimed to be Chin Wee's wife, RM153,600 for loss of support, RM10,000 for bereavement and RM30,000 for funeral expenses. The court awarded the same amounts for bereavement and funeral expenses to the fourth appellant, who was Sai Tiam's wife, but dismissed her claim for loss of support caused by the deaths of her husband and son. The respondents appealed to the High Court against the loss of support award made in favour of the third appellant whilst the fourth appellant appealed against the dismissal of her claim for similar relief. The High Court allowed the respondent's appeal and dismissed the fourth appellant's appeal. The instant appeal was against that decision. The issue in the third appellant's appeal was whether she was Chin Wee's 'wife' under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'), and, thus, satisfied the definition of 'wife' under s 7(2) of the Civil Law Act 1956 ('the CLA') to be entitled to claim for loss of dependency under that section. This was because the third appellant had only undergone a Chinese customary marriage with Chin Wee but the marriage was not solemnised in accordance with Part III of the LRA which came into effect on 1 March 1982. The sessions court held that Chin Wee and the third appellant were husband and wife pursuant to the Chinese customary marriage and the non-registration of that marriage under the LRA did not render the marriage invalid. The High Court,

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however, reversed the sessions court's finding on the ground there was no expert evidence to prove Chin Wee and the third appellant had indeed undergone a Chinese customary marriage.

Held, dismissing the appeals after restoring the sessions court's finding that Low Chin Wee and the third appellant were husband and wife according to Chinese custom:

(1) An unregistered ceremonial marriage such as the one entered into between Low Chin Wee and the third appellant clearly was not a marriage that was solemnised in accordance with Part III of the LRA. On the contrary, it was a marriage that was in breach of statute, and being in breach of the law the marriage was null and void and did not confer on the bride the status of 'wife' for the purpose of s 7(2) of the CLA. Such marriage, although valid under one's personal or customary law, was no marriage at all for the purposes of the LRA (see paras 44–45).

(2) After the coming into force of the LRA, it was the LRA and not the CLA, the Married Women Act 1957 or any statute of general application nor any legal doctrine or custom that determined the legal status of a marriage between two non-Muslims. It was therefore in the LRA, and not elsewhere, that one had to look for the answer to the question who was a 'wife' under s 7(2) of the CLA. The spirit of the LRA dictated that before a woman could be recognised as a wife, she had to undergo a marriage that was solemnised in accordance with Part III of the LRA. That was a pre-requisite for a woman to acquire the status of wife (and a man the status of husband) after the coming into force of the LRA (see paras 40–41).

(3) Section 5(4) of the LRA which read that 'After the appointed date, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III', was clear and unambiguous and had to be given its natural and ordinary meaning. The provision admitted of only one construction, and that was, after 1 March 1982, all non-Muslim marriages must be solemnised in accordance with Part III of the LRA and not in accordance with any other marriage rites, except those covered by s 3(4). Section 22(4) declared every marriage purported to be solemnised in Malaysia void unless a certificate for marriage or a licence had been issued by the registrar or Chief Minister or a statutory declaration under sub-s (3) had been delivered to the registrar or assistant registrar, as the case might be (see paras 41–43 & 46).

(4) Marriages that were exempt from registration were those that were solemnised prior to 1 March 1982 and not after that date. This was clear from s 4(1) of the LRA. The reason why such marriages were exempt from registration was because under s 4(2) they were deemed to be registered (see paras 49–50).

(5) There was no appealable error on the part of the courts below that warranted appellate intervention in the case of the fourth appellant's appeal. On the evidence, the sessions court was perfectly entitled to make findings of fact, in particular, that the fourth appellant was not dependent on her husband and son for her living prior to the accident. The High Court was right in not interfering with those findings. From the grounds of judgments, both courts below had given sufficient consideration to the evidence presented by the fourth appellant before rejecting her claim for loss of support. This was clearly not a case where the finding was unsupported by, or was grossly against, the weight of evidence. The fourth appellant's appeal was against findings of fact which no doubt involved the question of the credibility of the witnesses. An appellate court would not interfere willy-nilly with such findings (see paras 55–58).

(6) Section 34 of the LRA did not validate any unregistered marriage, customary or otherwise, that was solemnised after 1 March 1982. The Court of Appeal's decisions in *Joremi bin Kimin & Anor v Tan Sai Hong* [2001] 1 MLJ 268 and in *Chai Siew Yin v Leong Wee Shing* [2004] 1 CLJ 752 were no longer good law for the proposition that s 34 of the LRA validated any unregistered customary marriage that was solemnised after the coming into force of the LRA (see paras 32 & 36).

(7) There was no valid reason for the High Court to have disturbed the finding of fact made by the sessions court that Low Chin Wee and the third appellant were husband and wife according to Chinese custom. The third appellant's testimony that she and Low Chin Wee were married according to Chinese custom was not challenged at all in cross-examination. The evidence was therefore deemed to be admitted. It was wrong of the High Court to have come to its own finding that the third appellant's customary marriage with Low Chin Wee was not proven. According, the sessions court's finding on that point was restored (see paras 14–15).

[Bahasa Malaysia summary

Perayu-perayu telah menyaman responden-responden di mahkamah sesyen untuk ganti rugi am dan khas kerana kemalangan jalan raya yang telah mengorbankan dua orang — Low Sai Tiam ('Sai Tiam') dan anak lelakinya, Low Chin Wee ('Chin Wee'). Kedua-dua si mati berada dalam jip yang dipandu oleh perayu pertama apabila ia melanggar dengan kenderaan yang dipandu oleh responden pertama. Mahkamah sesyen mendapati responden pertama bertanggungjawab sepenuhnya untuk kemalangan itu dan mengawardkan perayu ketiga, yang mendakwa sebagai isteri Chin Wee, RM153,600 untuk kehilangan sokongan, RM10,000 untuk kesedihan dan RM30,000 untuk perbelanjaan pengebumian. Mahkamah mengawardkan jumlah sama untuk kesedihan dan perbelanjaan pengebumian kepada perayu

keempat, yang merupakan isteri Sai Tiam, tetapi menolak tuntutannya untuk kehilangan sokongan akibat kematian suami dan anaknya. Responden-responden telah merayu kepada Mahkamah Tinggi terhadap award kehilangan sokongan yang dibuat menyebelahi perayu ketiga manakala perayu keempat telah merayu terhadap penolakan tuntutannya untuk relif yang sama. Mahkamah Tinggi telah membenarkan rayuan responden dan menolak rayuan perayu keempat. Rayuan ini adalah terhadap keputusan tersebut. Isu dalam rayuan perayu ketiga adalah sama ada dia adalah 'wife' Chin Wee di bawah Akta Pembaharuan Undang-Undang (Perkahwinan dan Perceraian) 1976 ('APU'), dan, oleh itu, memenuhi tafsiran 'wife' di bawah s 7(2) Akta Undang-Undang Sivil 1956 ('AUS') untuk berhak menuntut kehilangan kebergantungan di bawah seksyen tersebut. Ini adalah kerana perayu ketiga hanya melalui perkahwinan adat Cina dengan Chin Wee tetapi perkahwinan itu tidak disahkan menurut Bahagian III APU yang berkuat kuasa pada 1 Mac 1982. Mahkamah sesyen memutuskan bahawa Chin Wee dan perayu ketiga adalah suami dan isteri menurut perkahwinan adat Cina dan perkahwinan tersebut yang tidak didaftarkan di bawah APU tidak menyebabkan perkahwinan itu tidak sah. Mahkamah Tinggi, bagaimanapun, mengakas dapatan mahkamah sesyen atas alasan tiada pakar keterangan untuk membuktikan Chin Wee dan perayu ketiga sememangnya telah melalui perkahwinan adat Cina.

Diputuskan, menolak rayuan-rayuan selepas mengembalikan dapatan mahkamah sesyen bahawa Low Chin Wee dan perayu ketiga adalah suami isteri menurut adat Cina:

(1) Perkahwinan adat yang tidak didaftarkan seperti yang dimasuki antara Chin Wee dan perayu ketiga jelas bukan perkahwinan yang disahkan menurut Bahagian III APU. Sebaliknya, ia adalah perkahwinan yang melanggar statut, dan kerana ia melanggar undang-undang perkahwinan itu adalah terbatal dan tidak sah dan tidak memberikan pengantin status 'wife' bagi tujuan s 7(2) AUS. Perkahwinan sebegini, meskipun sah di bawah undang-undang peribadi atau adat seseorang, ia bukan perkahwinan langsung bagi tujuan APU (lihat perenggan 44–45).

(2) Selepas APU mula berkuat kuasa, ia adalah APU dan bukan AUS, Akta Perempuan Berkahwin 1957 atau apa-apa statut yang mempunyai pemakaian am ataupun apa-apa doktrin undang-undang atau adat yang menentukan status sah perkahwinan antara dua orang bukan Muslim. Oleh itu dalam APU, dan bukan di mana lain, seseorang itu perlu lihat untuk mendapat jawapan kepada persoalan siapa 'wife' di bawah s 7(2) AUS. Tujuan APU menyatakan bahawa sebelum seorang wanita boleh diiktiraf sebagai seorang isteri, dia perlu melalui perkahwinan yang telah disahkan menurut Bahagian III APU. Ia adalah prasyarat untuk seorang wanita memperoleh status isteri (dan lelaki status suami) selepas APU mula berkuat kuasa (lihat perenggan 40–41).

(3) Seksyen 5(4) APU yang menyebut bahawa 'After the appointed date, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III', adalah jelas dan tidak taksa dan perlu diberikan maksud semula jadi dan biasanya. Peruntukan itu menerima hanya satu pembentukan, dan ia adalah, selepas 1 Mac 1982, semua perkahwinan bukan Muslim perlu disahkan menurut Bahagian III APU dan bukan menurut apa-apa adat perkahwinan lain, kecuali yang terjatuh di bawah s 3(4). Seksyen 22(4) mengisytiharkan setiap perkahwinan bagi maksud disahkan di Malaysia adalah tidak sah kecuali sijil perkahwinan atau lesen pendaftar atau Ketua Menteri atau deklarasi berkanun di bawah sub-s (3) telah diserahkan kepada pendaftar atau penolong pendaftar, mengikut kes (lihat perenggan 41–43 & 46).

(4) Perkahwinan yang dikecualikan daripada pendaftaran adalah yang telah disahkan sebelum 1 Mac 1982 dan bukan selepas tarikh tersebut. Ini jelas dalam s 4(1) APU. Sebab kenapa perkahwinan sebegini dikecualikan daripada pendaftaran adalah kerana di bawah s 4(2) mereka dianggap telah didaftarkan (lihat perenggan 49–50).

(5) Tiada kesilapan yang boleh dirayu di pihak mahkamah bawahan yang mewajarkan campur tangan mahkamah rayuan dalam kes rayuan perayu keempat. Berdasarkan keterangan, mahkamah sesyen memang berhak untuk membuat penemuan fakta, khususnya, bahawa perayu keempat tidak bergantung kepada suami dan anaknya untuk kehidupannya sebelum kemalangan itu. Mahkamah Tinggi adalah betul kerana tidak campur tangan dengan penemuan tersebut. Berdasarkan alasan penghakiman, kedua-dua mahkamah bawahan telah memberikan pertimbangan mencukupi terhadap keterangan yang dikemukakan oleh perayu keempat sebelum menolak tuntutannya untuk kehilangan sokongan. Ini jelas bukan kes di mana penemuan tidak disokong oleh, atau melampau terhadap, beban keterangan. Rayuan perayu keempat adalah terhadap penemuan fakta yang tanpa diragui melibatkan persoalan kebolehpercayaan saksi-saksi. Mahkamah Rayuan tidak akan campur tangan sesuka hati dengan penemuan sedemikain (lihat perenggan 55–58).

(6) Seksyen 34 APU tidak mengesahkan apa-apa perkahwinan yang tidak didaftarkan, secara adat atau sebaliknya yang telah disahkan selepas 1 Mac 1982. Keputusan Mahkamah Rayuan dalam *Joremi bin Kimin & Anor v Tan Sai Hong* [2001] 1 MLJ 268 dan dalam *Chai Siew Yin v Leong Wee Shing* [2004] 1 CLJ 752 bukan lagi undang-undang yang kukuh untuk cadangan bahawa s 34 APU mengesahkan apa-apa perkahwinan adat yang tidak berdaftar yang telah disahkan selepas APU mula berkuat kuasa (lihat perenggan 32 & 36).

(7) Tiada sebab sah untuk Mahkamah Tinggi mengganggu penemuan fakta yang dibuat oleh mahkamah sesyen bahawa Low Chin Wee dan perayu

ketiga adalah suami dan isteri menurut adat Cina. Keterangan perayu ketiga bahawa dia dan Low Chin Wee telah berkahwin menurut adat Cina tidak dicabar langsung dalam pemeriksaan balas. Keterangan itu oleh itu dianggap telah diterima. Ia dalah salah untuk Mahkamah Tinggi untuk membuat penemuannya sendiri bahawa perkahwinan adat perayu ketiga dengan Low Chin Wee tidak dibuktikan. Berikutan itu, penemuan mahkamah sesyen berhubung perkara ini telah dikembalikan (lihat perenggan 14–15).]

Notes

For cases on customary marriage, see 7(3) *Mallal's Digest* (5th Ed, 2015) paras 4529–4532.

Cases referred to

Chai Siew Yin v Leong Wee Shing [2004] 1 CLJ 752, CA (refd)
Chai Siew Yin v Leong Wee Shing Civil Appeal No 2–10 of 2003(W), (Unreported), FC (refd)
Cheong Seok Leng v PP [1988] 2 MLJ 481; [1988] 1 LNS 39 (refd)
Chong Sin Sen v Janaki a/p Chellamuthu (suing as widow of Muniappa Pillai a/l Maritha Muthoo, deceased, on behalf of herself and the dependants of the deceased) [1997] 5 MLJ 411; [1997] 2 CLJ 699, HC (refd)
Joremi bin Kimin & Anor v Tan Sai Hong [2001] 1 MLJ 268; [2001] 1 CLJ 526; [2001] AMR 675, CA (refd)
Leong Wee Shing v Chai Siew Yin [2000] 5 MLJ 162; [2000] 1 CLJ 439, HC (refd)
PP v Sihabduin bin Haji Salleh & Anor [1980] 2 MLJ 273; [1981] CLJ 39; [1981] CLJ Rep 82, FC (refd)
Tan Sai Hong v Joremi Kimin & Anor [1997] 5 CLJ 614; [1998] AMR 522, HC (refd)
Tan Weng Chiang v PP [1992] 2 MLJ 625; [1992] 4 CLJ 2094; [1992] 1 CLJ Rep 324, SC (refd)
Wong Swee Chin v PP [1981] 1 MLJ 212, FC (refd)

Legislation referred to

Civil Law Act 1956 s 7, 7(1), (2)
Christian Marriage Ordinance (Cap 24)
Church and Civil Marriage Ordinance (Cap 92)
Law Reform (Marriage and Divorce) Act 1976 ss 3(3), (4), 4(1), (2), 5(4), 22(4), 24, 27, 34, Part III
Married Women Act 1957

Appeal from: Civil Appeal No 12B-330–08 of 2013 (High Court, Shah Alam)

Harpal Singh Grewal (Harjeet Singh Sidhu, Patwant Singh Sohanpal and Reny Rao with him) (PS Sohanpal & Sidhu) for the appellants.

Reuben Netto (JS Naicker and Logananth Gunasagaram with him) (Naicker & Assoc) for the respondents.
Balwant Singh Sidhu (YN Foo with him) as amicus curiae for the Malaysian Bar.

Abdul Rahman Sebli JCA:

[1] The appeal by the third appellant raises a question of law of great general importance. The question is whether, after the coming into force of the Law Reform (Marriage and Divorce) Act 1976 ('the LRA') with effect from 1 March 1982, all marriages for persons domiciled in Malaysia must be registered under the LRA, and the legal effect of non-registration. The issue concerns the interplay between s 34 of the LRA and s 7(2) of the Civil Law Act 1956 ('the CLA').

[2] By virtue of s 3(3) and (4) however, the LRA does not apply to Muslims and to any native of Sabah and Sarawak or any aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom unless:

(a) he elects to marry under the LRA;

(b) he contracted his marriage under the Christian Marriage Ordinance (Sabah Cap 24); or

(c) he contracted his marriage under the Church and Civil Marriage Ordinance (Sarawak Cap 92).

[3] As for the fourth appellant's appeal, the question is whether she is entitled to claim for loss of support occasioned by the deaths of her husband and son.

[4] Having considered the submissions of both parties, including submissions from a representative of the Malaysian Bar who appeared as amicus curiae, we dismissed the third and fourth appellants' appeal by a unanimous decision. We now give the detailed reasons for our decision.

[5] The facts giving rise to this appeal are as follows. On 11 December 2010, the deceaseds Low Sai Tiam and Low Chin Wee, who were father and son respectively, were tragically killed in a road traffic accident. They were passengers in a motor jeep driven by the first appellant, which had collided with the vehicle driven by the first respondent who was making a U-turn without warning.

[6] The late Low Chin Wee left behind the third appellant, who claims to be his wife whilst the late Low Sai Tiam left behind his wife the fourth appellant, who is also the mother of the late Low Chin Wee. They, together with the first

and second appellants, sued the first respondent and his employer in the sessions court for general and special damages and succeeded.

[7] The first respondent was found 100% liable for the accident and the learned sessions court judge proceeded to make the following awards in favour of the third and fourth appellants:

Third appellant:

(a) RM153,600 for loss of support;

(b) RM10,000 for bereavement; and

(c) RM30,000 for funeral expenses.

Fourth appellant:

(a) RM10,000 for bereavement; and

(b) RM30,000 for funeral expenses.

[8] The fourth appellant's claim for loss of support occasioned by the deaths of her husband the late Low Sai Tiam and her son the late Low Chin Wee was however disallowed.

[9] Dissatisfied with the decision, the respondents appealed to the High Court but only against the award of RM153,600 to the third appellant for loss of support. The fourth appellant on her part cross-appealed against the dismissal of her claim for similar relief.

[10] Having heard arguments, the learned High Court judge allowed the respondents' appeal against the third appellant and dismissed the fourth appellant's cross-appeal. Hence the present appeal by the third and fourth appellants. The appeal does not concern the first and second appellants.

[11] We shall first deal with the appeal by the third appellant. The question that calls for consideration is whether she is the lawful wife of the late Low Chin Wee and therefore entitled to loss of dependency claim under s 7(2) of the CLA. Sub-sections (1) and (2) of s 7 are to be read together and are couched in the following language:

> (1) Whenever the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action in damages, notwithstanding the death of the person injured, and although the

death has not been caused under such circumstances as amount in law to an offence under the Penal Code.

(2) Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been caused and shall be brought by and in the name of the executor of the person deceased.

[12] Section 34 of the LRA on the other hand provides as follows:

Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

[13] The learned sessions court judge after a full trial of the action came to a finding that the late Low Chin Wee and the third appellant were husband and wife by Chinese customary marriage. This finding was however reversed by the High Court on the ground that there was no expert evidence to prove that the late Low Chin Wee and the third appellant had indeed undergone a Chinese customary marriage.

[14] We have gone through the record of appeal and the submissions of the parties carefully and we do not find any valid reason for the learned High Court judge to disturb the finding of fact made by the learned sessions court judge. The testimony of the third appellant that she and the late Low Chin Wee were married according Chinese custom was not challenged at all in cross-examination. The evidence is therefore deemed to be admitted: *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212. It was therefore wrong for the learned judge to have come to his own finding that the third appellant's customary marriage with the late Low Chin Wee was not proved.

[15] In the circumstances we restore the finding of the learned sessions court judge that the late Low Chin Wee and the third appellant were husband and wife according to Chinese custom.

[16] The undisputed fact, however, is that the marriage was never registered under the LRA. This is the crux of the matter — whether the marriage has been rendered void by such failure to register. The learned sessions court judge was of the view that the non-registration did not render the marriage invalid and accordingly ruled that the third appellant was the wife of the late Low Chin Wee within the meaning of s 7(2) of the CLA.

[17] In holding the view that he did, it is obvious that the learned sessions court judge was guided by the decision of this court in *Joremi bin Kimin & Anor v Tan Sai Hong* [2001] 1 MLJ 268; [2001] 1 CLJ 526; [2001] AMR 675 where it was held that a spouse from a customary marriage falls within the

definition of 'wife' under the CLA. In that case both the High Court and this court relied on s 34 of the LRA as a saving provision to recognise the wife of a customary marriage as a dependent of the deceased husband.

[18] At the High Court stage of the case, Abdul Malik Ishak J (as he then was) in a judgment reported in *Tan Sai Hong v Joremi Kimin & Anor* [1997] 5 CLJ 614; [1998] AMR 522 gave the following reasons for validating the unregistered marriage between the plaintiff and the deceased:

> What kind of connotation must one give to the word 'wife'? Who is a 'wife' under s 7(2) of the Civil Law Act? Section 7(2) of the Civil Law Act merely says, inter alia, that an action shall be brought for the benefit of the wife. It does not seek to differentiate nor make a distinction between a lawful wife and unlawful wife. It is instructive to note that the Civil Law Act and the Law Reform (Marriage and Divorce) Act 1976 was promulgated to provide and protect monogamous marriages. Here, there was no evidence at all that the defendant had other wives other than the plaintiff. They both lived as far as the evidence goes harmoniously as husband and wife and they had three children out of that union. Madam J Chandrika rightly pointed out that it would be a terrible injustice and against public policy to rule on the status of the deceased's marriage after his death. Section 34 of the Law Reform (Marriage and Divorce) Act 1976 sets out the effect of registration this way:
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> > Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered. It appears that s 34 of the Law Reform (Marriage and Divorce) Act 1976 saves the day for the plaintiff. In my judgment that Chinese customary marriage between the plaintiff and the deceased was valid and it was not registered. As a saving clause, s 34 of the Law Reform (Marriage and Divorce) Act 1976 sure comes in handy for those people who contracted Chinese customary marriages. Incidentally, this very section was not raised nor ventilated in *T v O* and had that section been applied the outcome might have been different.

[19] In affirming the High Court decision, this court through Haidar Mohd Noor JCA (as he then was) who delivered the unanimous decision of the court held that the customary marriage between the respondent and the deceased was valid, as registration was 'merely a formality'.

[20] In other words, since the marriage was valid according to Chinese custom, the fact that it was not registered did not render it invalid, notwithstanding s 27 of the LRA which provides for compulsory registration after the coming into force of the LRA. This provision is important in the entire scheme of things and is reproduced below for ease of reference:

> 27 Registration
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> The marriage of any person ordinarily resident in Malaysia and of every person

resident abroad who is a citizen of or domiciled in Malaysia after the appointed date *shall be registered pursuant to this Act*. (Emphasis added.)

[21] As for the meaning to be ascribed to the word 'wife' in s 7(2) of the CLA, the court endorsed and adopted the following observations by Mohd Ghazali J (as he then was) in *Chong Sin Sen v Janaki a/p Chellamuthu (suing as widow of Muniappa Pillai a/l Maritha Muthoo, deceased, on behalf of herself and the dependants of the deceased)* [1997] 5 MLJ 411 at p 417; [1997] 2 CLJ 699 at p 706:

As quite rightly submitted by counsel for the respondent, the word 'wife' is not defined in the Civil Law Act. Counsel for the appellant has argued that after the date of coming into operation of the 1976 Act, a marriage contracted in contravention of the provisions of the Act shall be void. Section 9 which is found under Part III of the 1976 Act provides that a marriage under the Act may be solemnised only by the registrar and s 22(4) provides every marriage purported to be solemnised in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the registrar or Chief Minister or a statutory declaration under sub-s (3) has been delivered to the registrar or assistant registrar as the case may be. Section 5(4) provides that after the date of coming into operation of the Act, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III. On the face of it, it would seem that the customary marriage underwent by the respondent and the deceased, as far as the 1976 Act is concerned, would be void — they had only contracted a customary marriage after the date of coming into operation of the 1976 Act and there is no evidence to show that it was solemnised pursuant to the provisions of the 1976 Act, neither has the respondent furnished a copy of the certificate of marriage issued pursuant to the Act. Since the respondent's marriage to the deceased would seem to be void pursuant to the provisions of the 1976 Act, does that preclude her from bringing an action under ss 7 and 8 of the Civil Law Act? In other words, is the respondent a 'wife' within the contemplation of s 7(2) of the Civil Law Act?

In my opinion, since the Legislature has seen it fit not to define what is meant by a 'wife' in the Civil Law Act, and unless there be something in the context to the contrary, I would think that that word should be read as applicable to those things to which they would in their natural sense apply. I cannot find anything in the Civil Law Act which provides that the term 'wife' as found in s 7(2) should be confined to a woman who is a party to a marriage solemnised and/or registered under any prevailing Act relating to marriages and divorce.

That being the case, I would think that it is for the court to interpret that word as found in the Civil Law Act as best it may.

In the instant case, I would decline to consider the provisions of the 1976 Act which to me is a statute which proceeds on different lines and includes different provisions which deals with a different subject matter. The preamble to the 1976 Act reads:

An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

I am unable to see how it ought to have any influence upon the question which I have to decide, ie whether the respondent falls within the contemplation of the word 'wife' found in s 7(2) of the Civil Law Act. I do not think that I should speculate on what the intention of the Legislature was with regard to s 7(2), ie as to whether such a term should only be restricted to a 'married woman' who has undergone a marriage solemnised and registered in accordance with the prevailing Act relating to marriages.

What the Legislature intended to be or not to be done can only be ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. In my opinion, I do not think that the word 'wife' found in s 7(2) of the Civil Law Act should be restricted to a woman whose marriage has been solemnised and registered pursuant to the provisions of any prevailing Act relating to marriage and divorce. The Married Women Act 1957 provides that a 'married woman' includes any woman who has undergone a customary marriage — to me, such a 'married woman' would fall within the contemplation of the word 'wife' as found in s 7(2) of the Civil Law Act — and the Act also provides that she shall be capable of suing in tort and shall be entitled to all remedies and redress for all purposes. In the instant case it is my view that the respondent, having undergone a customary marriage with the deceased, is a 'wife' and hence had locus standi to bring this action on behalf of the deceased's estate and that being so, I dismissed the appeal with costs.

[22] Of particular interest to us in the above judgment of Mohd Ghazali J is that although he acknowledged that the respondent's marriage to the deceased 'would seem to be void' under the LRA, he declined to consider the provisions of the LRA on the ground that it is a statute 'which proceeds on different lines and includes different provisions which deals with a different subject matter'. Consequently he did not consider the question of whether the marriage must be registered under the LRA before it could be recognised as a valid marriage.

[23] Section 34 of the LRA came again for consideration before this court in *Chai Siew Yin v Leong Wee Shing* [2004] 1 CLJ 752. Briefly the facts are these. The plaintiff Leong Wee Shing claimed that she was married to the deceased Lau Yen Yoon by way of customary marriage on 19 November 1995, ie post LRA. The deceased was killed in a road accident on 7 March 1999. She claimed that as the wife of the deceased, she was entitled to all assets acquired by the deceased during his lifetime.

[24] The mother of the deceased refuted her claim and, inter alia, alleged that there was no customary marriage between the plaintiff and the deceased. In the alternative she alleged that the customary marriage between her deceased son and the plaintiff was not registered and thus void for non-registration.

[25] At the High Court, RK Nathan J in *Leong Wee Shing v Chai Siew Yin* [2000] 5 MLJ 162; [2000] 1 CLJ 439 found for the plaintiff and declared her marriage to the deceased to be valid, principally on the ground that a Chinese

customary marriage had taken place between the plaintiff and the deceased, and that although it was not registered, s 34 of the LRA 'validated' it. This is how the learned judge sought to legitimise the marriage:

> It is not in dispute that the appointed date referred to in the said search is 1 March 1982. To my mind the defendant's submission ignores the provision of s 34 of the Act. The said section reads as follows:
>
> > 34 Legal effect of registration.
> >
> > Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.
>
> The object of the Act was to regulate or regularise aspects of marriage and divorce of non-Muslims in the country. This was the spirit and intent of the Act. Surely therefore it cannot be the intention of Parliament that all marriages that had occurred before 1 March 1982 and not registered, ought to be held void and not recognised as valid. The serious conseqences of such an interpretation would be mind boggling. For example, such an interpretation would have the effect of bastardising issues, and causing disarray upon inheritance. It is to avert such a catastrophe that s 34 was introduced. This has the effect of validating such marriages that were not registered before 1 March 1982. Therefore now all marriages are valid. The only issue that the defendant can possibly raise is, was there a valid marriage in this case. If there is a valid marriage then clearly s 34 of the Act would validate this marriage.

[26] The decision was affirmed by this court in a unanimous decision and judgment was delivered by Gopal Sri Ram JCA (as he then was), who ruled:

> That leaves the question of law. The argument is that the respondent's customary marriage in question is void for want of registration under the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). The learned judge rejected — and in our view rightly rejected — that argument. It is plain that the fallacy of the appellant's argument lies in its oversight of the object and purpose of the Act.
>
> The main purpose of the Act is to prohibit polygamous marriages among non-Muslims. This is made clear in s 5 of the Act. It is to achieve this object that the Act requires the registration of non-Muslim marriages. But nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the ceremonial rites of the community to which they belong. And Parliament has taken pains to make that abundantly clear in s 34 of the Act. The judge quoted it. He relied on it. This is what it says:
>
> > Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.
>
> The marginal note reads 'Legal effect of registration'. It indicates what s 34 is all about. Can we use it to interpret the section? I think we can.
>
> Now, it is true that at one time it was taboo to use a marginal note as an aid when

interpreting a statutory provision. If you look at the old cases; and even those decided in the 1960's; you will see a refusal by judges to rely on the marginal note to a section as an aid to interpretation. See, for example, *Claydon v Green* [1868] LR 3 CP 511. So, in *Parson's v BNM Laboratories* [1964] 1 QB 95, Harman LJ said:

> I must, however, here say that I have always been brought up to believe that to interpret an Act of Parliament by the side-notes to the sections is quite inadmissible although there are judicial pronouncements seeming to show that judges have not always refrained, as in my judgment they should, from giving some weight to them.

But the modern approach is far more liberal. It is exemplified by what Augustine Paul JC said in *Ganesan v Setiausaha Suruhanjaya Pasukan Polis* [1998] 1 MLJ 240; [1997] 1 LNS 227 which I consider to be the correct statement of the law:

> A marginal note to a section is part of the statute. It may be considered in construing the section or any other provision of the statute, provided due account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section (see *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Sithambaran v Attorney General* [1972] 2 MLJ 175; *Re Tan Keng Tin & Re Chop Soon Bee* [1932] MLJ 134).

Returning to the present instance, the marginal note to s 34 of the Act confirms beyond doubt what the section says. To paraphrase the section, it says that a marriage that is otherwise valid is not invalid merely because it has not been registered under the Act. That is the result which is produced when the section is read as follows:

> Nothing in this Act or the rules made thereunder shall be construed to render ... invalid any marriage which otherwise is valid merely by reason of its ... not having been registered.

This is the way in which, I think, that section should be read if it is to make any sense. And that is the way in which, I think, that Parliament intended it to be read.

At the end of the day, a marriage is a contract; albeit a very special type of contract; and if it is Parliament's intention to strike it down for want of registration I would expect very clear language to that effect in the Act. For, the result would be to legitimise the issue of non-registered customary marriages. This would produce a harsh and unjust result. And as Raja Azlan Shah J (as he then was) said in *Pesurohjaya Ibu Kota Kuala Lumpur v Public Trustee & Ors* [1971] 2 MLJ 30; [1971] 1 LNS 104: 'The presumption is that the legislature does not intend what is unjust'. However, as it happens, in the present case, Parliament has expressly said that non-registration is not to have any effect on an otherwise valid marriage.

[27] We pause here to note that up to that point, *Joremi bin Kimin* and *Chai Siew Yin* represented the position of the law on s 34 of the LRA read in conjunction with s 7(2) of the CLA. The law as it stood then was that so long as the marriage contracted by the parties was valid according to the ceremonial

rites of the community to which they belonged, non-registration did not render the marriage invalid.

[28] The authoritative force of these two decisions was however nullified when the Federal Court reversed *Chai Siew Yin* in Civil Appeal No 2–10 of 2003(W). In a brief unreported oral judgment delivered by Pajan Singh Gill FCJ on 29 January 2004, this is what the Federal Court decided:

> Having heard the detailed arguments and having considered the relevant provisions of the Law Reform (Marriage and Divorce) Act 1976 and in the circumstances of this case, we are unanimous in our decision that this appeal be allowed.
>
> We are not in agreement with the reasoning of the judgments both in the High Court and the Court of Appeal.
>
> Section 34 of the said Act should not be read in isolation, but in harmony with the other provisions of the Act which encapsulate the overall intention of the Legislature in enacting the Act. To do otherwise would defeat the purpose and intention of the Act which was enacted to 'provide for monogamous marriages and the solemnization and registration of such marriages'.

[29] We believe it has not escaped attention that in paras 18, 21, 25 and 26 above, we have quoted *in extenso* the pronouncements of Abdul Malik Ishak J, Mohd Ghazali J (as adopted by this court), RK Nathan J and Gopal Sri Ram JCA in the course of delivering their respective judgments.

[30] We did so for two reasons. One, to provide context to the oral judgment of the Federal Court in *Chai Siew Yin* and second, to show that the point of law raised in the present appeal had already been ventilated right up to the Federal Court. We are not aware of any later decision of the Federal Court that decided the point differently.

[31] The oral grounds of decision delivered by Pajan Singh Gill FCJ may be brief but there is no room for argument that the effect of the judgment is to completely overturn this court's decisions in *Joremi Kimin* and *Chai Siew Yin* on the proper construction to be given to s 34 of the LRA vis a vis s 7(2) of the CLA. In the light of this decision of the Federal Court, it is perplexing that an attempt is now being made to resurrect an issue that has been put to rest some 12 years ago.

[32] Clearly the apex court decision binds this court, the High Court and the sessions court by the doctrine of stare decisis. It provides in our view a complete answer to the question of law for our determination. Thus, after the coming into force of the LRA on 1 March 1982, all non-Muslim marriages for persons domiciled in Malaysia must be registered under the LRA. Section 34

A does not validate any unregistered marriage, customary or otherwise that is solemnised after 1 March 1982.

[33] Non-Musims who enter into customary marriages after the appointed date must be mindful of the dire consequences of non-registration. They must B understand that failure to register their marriages will have far-reaching implications on their marital status and rights under the law. The situation that the third appellant has found herself in, wittingly or unwittingly, should serve as a reminder to those who contemplate going through the treacherous path of C unregistered marriage.

[34] Learned counsel for the appellants argued that the Federal Court decision in *Chai Siew Yin* is irrelevant and has no application to the facts of the present case as it was a decision on a claim under the law of succession and not D a decision on s 7(2) of the CLA. With due respect to counsel, the argument is futile.

[35] Although the Federal Court did not touch on s 7(2) of the CLA, by setting aside the dictum of the High Court on s 34 of the LRA which this court E affirmed, it had effectively decided that registration is a mandatory requirement in order to constitute a valid marriage. The Federal Court made it clear that it did not agree with the reasoning of the judgments of both RK Nathan J in the High Court and Gopal Sri Ram JCA in the Court of Appeal.

F **[36]** As only a validly solemnised marriage will make a woman a wife, an invalid marriage will not. *Joremi Kimin* and *Chai Siew Yin* are no longer good law for the proposition s 34 of the LRA validates any unregistered customary marriage that is solemnised after the coming into force of the LRA.

G **[37]** Despite the brevity of the Federal Court judgment in *Chai Siew Yin*, the ratio decidendi of the case is unmistakeably clear, that for any marriage to be valid after the appointed date, it must be registered under the LRA, for in the words of Pajan Singh Gill FCJ, 'To do otherwise would defeat the purpose and H intention of the Act which was enacted to 'provide for monogamous marriages and the solemnisation and registration of such marriages'.

[38] The three cases of *Joremi Kimin*, *Chong Sin Sen* and *Chai Siew Yin* demonstrate how ambiguous the word 'wife' in s 7(2) of the CLA is in its I application to s 27 of the LRA, which requires for all non-Muslim marriages to be registered after the coming into force of the LRA. We do not think however that this presents undue difficulty. In construing the word, it must not be confined to the CLA or by simply giving the word its ordinary, popular or dictionary meaning.

[39] It must be construed in the context and within the framework of the LRA, which is a special statute specially promulgated by Parliament for the specific purpose of regulating marriage and divorce among non-Muslims in the country, which the CLA is not. It calls for a purposive approach of statutory interpretation.

[40] After the coming into force of the LRA, it is the LRA and not the CLA, the Married Women Act 1957 or any statute of general application, nor any legal doctrine or custom that determines the legal status of a marriage between two non-Muslims. It is therefore in the LRA and not elsewhere that we should look for the answer to the question who is a 'wife' under s 7(2) of the CLA.

[41] The spirit of the LRA dictates that before a woman can be recognised as a wife, she must undergo a marriage that is solemnised in accordance with Part III of the LRA. That is a prerequisite for a woman to acquire the status of a wife (and a man the status of a husband) after the coming into force of the LRA. The argument that the LRA does not make registration compulsory flies in the face of s 5(4) which reads:

> After the appointed date, no marriage under any law, religion, custom, or usage may be solemnized except as provided in Part III.

[42] The provision is clear and unambiguous and must be given its natural and ordinary meaning. It is not for us to invent fancy ambiguities as an excuse not to give effect to its plain meaning or twist and stretch the language beyond common sense: *Public Prosecutor v Sihabduin bin Haji Salleh & Anor* [1980] 2 MLJ 273; [1981] CLJ 39; [1981] CLJ Rep 82; *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625; [1992] 4 CLJ 2094; [1992] 1 CLJ Rep 324; *Cheong Seok Leng v Public Prosecutor* [1988] 2 MLJ 481; [1988] 1 LNS 39. Our duty is to give effect to the object of the provision, not to defeat it.

[43] Having regard to the clarity of language used in s 5(4), we are clear in our minds that the provision admits of only one construction, and that is, after 1 March 1982, all non-Muslim marriages must be solemnised in accordance with Part III of the LRA and not in accordance with any other marriage rites, except those covered by s 3(4). Any proposition to the contrary will rock the whole foundation of the Act, whose object in pith and substance is to regulate the solemnisation and registration of monogamous marriages.

[44] If a couple wishes to marry according to their own custom, the LRA does not stop them from doing so. In fact s 24 facilitates the solemnisation of such marriage. But an unregistered ceremonial marriage such as the one entered into between the late Low Chin Wee and the third appellant clearly is not a marriage that is solemnised in accordance with Part III of the LRA.

[45] On the contrary, it is a marriage that will be in breach of statute, and being in breach of the law, the marriage will be null and void and will not confer on the bride the status of a 'wife' for the purpose of s 7(2) of the CLA. Such marriage although valid under one's personal or customary law is no marriage at all for purposes of the LRA.

[46] If s 5(4) is still unclear as to the legal status of such marriage, s 22(4) removes all doubt. It provides as follows:

> (4) Every marriage purported to be solemnized in Malaysia *shall be void* unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be. (Emphasis added.)

[47] The certificate for marriage, licence or statutory declaration referred to in s 22(4) above means a certificate, licence or statutory declaration issued or delivered as the case may be pursuant to the LRA, which *ex necessitate* involves prior registration of the marriage. Without such certificate or licence having been issued or such statutory declaration having been delivered, the purported marriage 'shall be void'.

[48] This is where, with the greatest of respect, we think Gopal Sri Ram JCA fell into error when he said in *Chai Siew Yin* (see para 26 above) that 'nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the ceremonial rites of the community to which they belong'. Contrary to what the learned judge said, the effect of ss 5(4) and 22(4) of the LRA is that such customary marriage, being solemnised after the appointed date, will be void for want of registration.

[49] Marriages that are exempted from registration are marriages that were solemnised prior to the appointed date, ie before 1 March 1982 and not after. This is clear from s 4(1) which stipulates:

> (1) Nothing in this Act shall affect the validity of any marriage solemnized under any law, religion, custom or usage prior to the appointed date.

[50] The reason why such marriages are exempted from registration is because under s 4(2) they are deemed to be registered. Being deemed to be registered means the marriages are valid although unregistered. This is how s 4(2) validates such marriages:

> (2) Such marriage, if valid under the law, religion, custom or usage under which it was solemnized, shall be deemed to be registered under this Act.

[51] The truth is, Parliament never intended to invalidate valid but

unregistered marriages that were solemnised before the coming into force of the LRA. Such marriages are valid not because of s 34 but because of s 4(1) and (2). Seen from this perspective, s 34 is a surplusage in that it purports to validate marriages that are already deemed to be valid. A

[52] Section 4(2) reflects the importance placed by the Legislature on the need for all non-Muslim marriages to be registered after the appointed date. There was no need for Parliament to enact such deeming provision if registration was not intended to be compulsory after the coming into force of the LRA. That would be to legislate in vain. The existence of s 4(2) of the LRA fortifies the argument that registration is a must after 1 March 1982. B C

[53] In all sympathy to the third appellant, we must say this in our concluding remark. Nothing can take away the fact that she is the lawfully wedded wife of the late Low Chin Wee under Chinese customary marriage but by not registering the marriage under the LRA, it has become void by operation of law. D

[54] That wraps up our deliberation on the appeal by the thirdappellant. We shall now deal with the appeal by the fourth appellant. Her grievance is that both the sessions court and the High Court were wrong in disallowing her claim for loss of support occasioned by the deaths of her late husband and son. E

[55] We have gone through the evidence, the grounds of judgments and the submissions of both sides carefully and we do not find any appealable error on the part of both courts below that warrants appellate intervention. F

[56] It is clear to us that on the evidence before him, the learned sessions court judge was perfectly entitled to make those findings of fact and the learned High Court judge was right in not interfering with those findings, in particular the finding by the learned sessions court judge that the fourth appellant was not dependent on her deceased husband and son for her living prior to the accident. G

[57] From the grounds of judgments it is clear that both courts below had given sufficient consideration to the evidence presented by the fourth appellant before rejecting her claim for loss of support. This is clearly not a case where the finding is unsupported by or is grossly against the weight of evidence. H

[58] In the final analysis the fourth appellant's appeal is against findings of fact which no doubt involved the question of the credibility of the witnesses. An appellate court will not interfere willy-nilly with such findings. It is only where a finding is plainly wrong that the appellate court will interfere. For this reason, the fourth appellant's appeal was also dismissed with costs. I

Appeals dismissed after restoring the sessions court's finding that Low Chin Wee and third appellant were husband and wife according to Chinese custom.

Reported by Ashok Kumar